IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.Appeal No.171-MA of 2006
Date of Decision: 31-10-2006

State of Haryana

.....Appellant

VERSUS

1.Basant @ Bhola son of Sardara, Jat, resident of Behrana, Thana Beri District Rohtak.
2.Rohtas son of Mange Ram, Jat, resident of Behrana Assan, Thana Sampla District Rohtak
3.Vikram son of Ram Kishan, Jat, resident of Bhambhewa, Thana Beri District Rohtak
4.Sandeep son of Inder Singh, Jat, resident of Jasor Kheri, Thana Sardar Bahadurgarh, District Rohtak.
5.Ran Singh @ Rama son of Sukhpal, resident of Assan, P.S. Sampla, District Rohtak

.....Respondent

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.PS Sullar, Deputy Advocate General, Haryana.

Mr.Rajat Rathi,Advocate for the
for the respondents.

R S MADAN, J.

This Criminal Appeal under Section 378(3) of the Code of Criminal procedure is filed by the State of Haryana for grant of leave to appeal against the judgment of acquittal dated 14-10-2005 passed by the Judicial Magistrate Ist Class, Rohtak in Criminal Case No.601 of 2002 under Section 394 of the Indian Penal Code registered at Police Station

Civil Line, Rohtak.

In brief, the facts of the case are that on 3-5-2003 Azad Singh son of Mange Ram, Jat resident of Jasia presently posted at Main Post Officer, Rohtak, who stated before the police that he is a resident of above address and is working as a Cashier in the main Post Office, Rohtak. Today, he along with Vijay son of Chandan Balmiki resident of Tej Colony, Rohtak presently posted as Peon in the main Post Office, Rohtak and Constable Amarjeet No.5/521 were going to deposit a sum of Rs.5,10,000/- in a suitcase to main branch of State Bank of India, Rohtak. Vijay Singh was holding a suitcase in his hand at about 10.20 A.M. and they were standing near the main gate of the Post Office and were waiting for the auto-rickshaw. In the meantime, three young boys, aged about 20-22 years came there, out of which one was of a fair complexion with thin body and was wearing blue shirt and second boy was also of fair complexion with healthy body and was wearing check shirt and third boy was of middle height and was wearing pent and shirt came near and boy wearing check shirt surrounded the Constable from back side and the boy wearing blue shirt attacked on the suitcase of Vijay Singh after showing pistol and the third boy tried to fire on them, which was missed and then the young boy wearing the check shirt fell down the Constable on the road, due to that he received the injuries on his right hand and he snatched his gun. At the same time, one Maruti Car of Grey colour stopped near thereby, all the three persons ran away towards DLF Colony after having suitcase of money and the gun. The number of the Car was noticed as DL-7CB 8214. On the basis of the aforesaid statements of the witnesses, the Investigating Officer visited the spot, prepared the rough site plan and arrested the accused. After

completing all the formalities, challan was presented in the Court of Illaqa Magistrate.

On appearance of the accused before the Court, a prima facie case for the offence under Section 394 read with Section 34 of the Indian Penal Code was made out against all the accused and they were charge-sheeted thereunder. The aforesaid charges were read over and explained to them, to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution relied upon the testimony of PW1-Azad Singh, Clerk Head Post Office, who proved Ex.P1 in chief and proved Ex.D1 To Ex.D5 in cross-evidence; PW2-Vijay, retired Peon, who proved Ex.PW2/A and Ex.PW2/B in his cross evidence; PW3-Constable Rohtash, who proved Ex.P1 Fard (corrected today and as be read as P1/A); PW4-Har Narain Singh ASI, who proved Ex.PW4/A disclosure statement of accused Basant, Ex.PW4/B disclosure statement of accused Vikram and Ex.PW4/C disclosure statement of accused Sandeep; PW5-Constable Virender, who proved Ex.P1 (corrected today and as be read as Ex.P1/B); PW6-ASI Atam Parkash, who proved Ex.P2 Fard Nishandehi; PW7-Inspector Jai Parkash; PW8-SI Satpal Singh, who proved Ex.PW8/A disclosure statement of accused Sandeep; PW9-Head Constable Satnam Singh, who proved FIR Ex.PW9/A; PW10-Satyawan Singh, who proved FIR Ex.PW-10/A; PW11-Lakhmi Chand, who proved Ex.PW11/A, disclosure statement of Sandeep, Ex.PW11/B Fard of recovery; PW12-Har Gopal, who proved Ex.PW12/A disclosure statement of Vikram, Ex.PW12/B disclosure statement of Rohtak, Ex.PW12/C Fard and Ex.PW12/D site plan dated 14-6-2003, PW13-Naresh Kumar, who proved Ex.PW13/A disclosure statement of accused Rohtash; PW14-Jai Kishan,

who proved Ex.PW14/A, police proceedings, Ex.PW14/B endorsement, Ex.PW-14/C site plan dated 21-11-2002, Ex.PW14/D site plan; PW15-ASI Ram Kumar, who proved Ex.PW15/B Fard, Ex.PW15/ map for recovery dated 16-6-2003 and Ex.PW15/D map of recovery dated 23-6-2003. Witness Mukesh was given up being unnecessary and thereafter evidence of the prosecution was closed.

After the case of the prosecution was closed, the statements of all the accused were recorded under Section 313 of the Code of Criminal Procedure, in which the entire incriminating evidence was put to them, to which they denied and pleaded false implication.

No evidence was led in defence.

After considering the oral as well as documentary evidence led by the prosecution, the learned Magistrate Ist Class, Rohtak did not find favour with the prosecution evidence and recorded the order of acquittal in favour of the accused.

Aggrieved by the impugned order of acquittal, the State has now sought the leave of this Court to file an appeal against the impugned order.

We have heard the learned counsel for the parties and have carefully gone through the record of the case.

The learned trial Court while going through the evidence of the prosecution was of the view that the disclosure statements made by the accused and subsequent recoveries with respect to various articles are an act of padding, as no independent witness was associated by the prosecution despite the fact that there was available.

Another ground which the learned trial Court has taken

with respect to non-production of the case property ie. gun, recovered money and suitcase, in the Court is that the same may be got identified from the prosecution witnesses.

The learned Magistrate was further of the view that the recovery memo prepared with respect to the recovered amount does not talley with the entries made in the pass-book Ex.D1 maintained by the Post Office where currency notes of hundred rupees and ten rupees were found mentioned and there was no bundle of currency notes of Rs.50/-. In view of the documentary evidence Ex.D1 and Ex.D2 (entry in pass-book regarding the bundle of rupees), the evidence of PW11 and Fard Ex.PW11/C and Ex.PW11/B were not considered to be a trustworthy evidence led by the prosecution because one bundle of currency note of Rs.50/- was found mentioned therein. Even no car number was disclosed in the FIR.

For the aforesaid reasons, the learned Magistrate blamed the Investigating Officer to be responsible for this lapse in the prosecution case. Resultantly, all the accused were acquitted.

We have also gone through the entire evidence led by the prosecution and found that the reasoning adopted by the learned Magistrate does not suffer from any infirmity. Hence, leave to appeal is declined in this case.

(R S MADAN)
JUDGE

(K S GAREWAL)
JUDGE

October 31, 2006
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